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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,216	07/23/2001	Davis Foulger	EMPIR-024AUS	4900

22468 7590 03/28/2005

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EXAMINER

TAYLOR, NICHOLAS R

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/911,216		FOULGER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Nicholas R Taylor		2141	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,9-21 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-21 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*TL*

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.
2. Claims 1-6, 9-21, and 24-26 have been presented for examination and are rejected.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 9-12, 14-20, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton et al. (US Patent number 6,763,380) and Czarnik et al. (US Patent number 5,812,529.)
5. As per claim 1 and 16, Mayton teaches a computer program product for backtracing network performance (Mayton, column 5 lines 26-31 and Fig. 1), the

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computer program product comprising a computer usable medium having computer readable code thereon, including program code comprising:

instructions for causing a processor to perform as a web monitor, said web monitor performing a network backtrace on said addresses (Mayton, column 5 lines 32-39); and

instructions for causing a processor to perform as a client, said client collecting and processing data resulting from said network backtrace, said client presenting results of said processing (Mayton, column 6 lines 1-12, wherein the console is a client on the network.)

However, Mayton fails to teach specifically capturing source addresses of packets received from a network when intended for a website, wherein a monitor observes the performance of the network on the path from said source address to said website experienced by actual users. Mayton also fails to teach wherein an indication is provided of the network quality of service the web site is experiencing for the routes being used to access said web site.

Czarnik teaches a monitor that observes network traffic of actual users (Czarnik, column 3, lines 53 to column 4, line 8) that captures source addresses of received packets (Czarnik, column 7, lines 45-50) intended for a website (Czarnik, column 5, lines 6-15) and provides an indication of the network quality of service the web site is experiencing for the routes being accessed (Czarnik, column 7, lines 3-28.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Mayton and Czarnik because doing so would

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enable an administrator to perform real time traffic assessment and estimate network capacity on a network (Czarnik, column 2, lines 36-40.)

6. As per claim 2 and 17, Mayton-Czarnik teaches the system further comprising instructions for causing a processor to access a database, said database storing data captured by said web monitor (Mayton, column 10 lines 37-41, where a database is inherent in the storage device.)

7. As per claim 3 and 18, Mayton-Czarnik teaches the system further comprising instructions for causing said client to perform a reporting function (Mayton, column 10 lines 45-50.)

8. As per claim 4 and 19, Mayton-Czarnik teaches the system further comprising instructions for causing said client to perform an administrative function (Mayton, column 11 lines 19-32, wherein "user input" allows administrative functions on the route analysis module.)

9. As per claim 5 and 20, Mayton-Czarnik teaches the system wherein said backtrace extends to a system selected from the group consisting of an end-user machine, a firewall and a router (Mayton, column 5 lines 33-40, wherein a firewall and router are network devices.)

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10. As per claim 9, Mayton-Czarnik teaches the system further comprising instructions for causing said product for backtracing network performance to include a plurality of intervals (Mayton, column 11 lines 60-67, wherein the time period is an interval.)

11. As per claim 10, Mayton-Czarnik teaches the system wherein one of said intervals comprises a write interval (Mayton, column 13 lines 21-32, wherein a traceroute involves writing.)

12. As per claim 11, Mayton-Czarnik teaches the system wherein one of said intervals comprises a trace interval (Mayton, column 13 lines 21-25.)

13. As per claim 12, Mayton-Czarnik teaches the system wherein one of said intervals comprises a prune interval (Mayton, column 13 lines 57-61, wherein grouping prunes the results.)

14. As per claims 14 and 25, Mayton-Czarnik teaches the system wherein each new address within a write interval is time-stamped (Mayton, column 13 lines 33-37, wherein the traceroute information contains the address in the write interval.)

15. As per claims 15 and 26, Mayton-Czarnik teaches the system wherein the first time a particular address is captured within a trace interval a traceroute operation is run

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on said address (Mayton, column 12 line 60 to column 13 line 9, and fig. 4, wherein the network performance measurements contain a traceroute operation in the trace interval.)

16. Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton et al. (US Patent number 6,763,380) and Czarnik et al. (US Patent number 5,812,529), and further in view of Shah et al. (US Patent number 6,446,121.)

17. As per claim 6 and 21, Mayton-Czarnik teaches the above including capturing a plurality of packets (Czarnik, column 7, lines 3-28) and extracting source and destination addresses (Czarnik, column 7, lines 45-50.) However, Mayton-Czarnik fails to teach the specific use of SYN packets. Shah teaches using SYN packets to determine round trip times (Shah, column 6 lines 3-18.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Shah with Mayton-Czarnik because doing so would give a method for measuring round trip time in a network (Shah, column 5 lines 60-63.)

18. Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayton et al. (US Patent number 6,763,380) and Czarnik et al. (US Patent number 5,812,529), and further in view of Buchholz et al. (US Patent number 5,493,569.)

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19. As per claim 13 and 24, Mayton-Czarnik teaches the above, and the system further wherein a user address is new within a write interval said user address is processed as a new user address (Mayton, column 12 lines 60-66 and fig. 4, wherein the start of operations on a new device is processing a new user address).

However, Mayton-Czarnik fails to teach the specific use of a request counter when a user request has already occurred. Buchholz teaches the use of a counter to determine duplicate requests from a user module (Buchholz, column 9 lines 15-17.)

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Buchholz with Mayton-Czarnik because doing so would reduce the likelihood of request traffic contention (Buchholz, column 9 lines 40-43.)

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3718.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nicholas Taylor  
Examiner  
Art Unit 2141

  
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